

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
TERRY'S THRIFTWAY,

Appellant,

vs.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 85

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

This matter, the appeal of a \$250 penalty for an alleged violation of respondent's Regulation I, came before all members of the Pollution Control Hearings Board in the Board's conference room in Olympia at 2:00 p.m., June 6, 1972.

Appellant declined to appear, but a six page typewritten statement was submitted by its owner, Terry Shibata. Respondent appeared through its counsel, Keith D. McGoffin.

A witness was sworn and testified for respondent. On the basis of testimony heard and Mr. Shibata's written statement examined,

1 the Pollution Control Hearings Board prepared Proposed Findings of Fact,  
2 Conclusions and Order which were submitted to the appellant and  
3 respondent on June 20, 1972. No objections or exceptions to the  
4 Proposed Findings, Conclusions and Order having been received, the  
5 Pollution Control Hearings Board makes and enters the following:

6 FINDINGS OF FACT

7 I.

8 Appellant owns a retail food store located at 9121 Evergreen Way,  
9 Everett, Snohomish County. It has an incinerator which does not meet  
10 the standards required in respondent's Regulation I. The incinerator  
11 is surrounded by a cyclone fence. For a considerable period prior to  
12 the instant matter and since then, the owner, Mr. Shibata, has not  
13 used the incinerator; instead, he hauls his waste material to a public  
14 dump. However, the cyclone fence is not locked against use of the  
15 incinerator by others.

16 II.

17 On December 11, 1971, the incinerator stack emitted smoke for at  
18 least 13 consecutive minutes of densities ranging from No. 3 to No. 5 on  
19 the Ringelmann Scale and caused "fly-ash" to be deposited on adjoining  
20 property. Mr. Shibata told an inspector of respondent he was not aware  
21 that the incinerator was being used. Notice of Civil Penalty No. 188,  
22 in the amount of \$250, was served on appellant.

23 From these Findings of Fact, the Pollution Control Hearings Board  
24 comes to these

25  
26 FINDINGS OF FACT,  
27 CONCLUSIONS AND ORDER

CONCLUSIONS

I.

Appellant was in violation of Sections 9.03(a)(1), 9.04 and 9.05 of respondent's Regulation I on December 11, 1971.

II.

In view of the personal efforts of Mr. Shibata to haul away waste material, the maximum civil penalty appears to be excessive. However, Mr. Shibata cannot expect to test further the patience of either this Board or respondent in the matter of continued unauthorized use of the incinerator when he has at hand the easy remedy of locking the incinerator's cyclone fence.

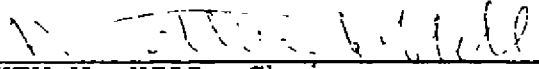
Therefore, the Pollution Control Hearings Board issues this

ORDER

Respondent's Notice of Civil Penalty No. 188 is sustained, but is remanded to respondent for fixing of an amount more appropriate with Mr. Shibata's personal efforts to be in compliance with respondent's regulations.

DONE at Olympia, Washington this 12th day of July, 1972.

POLLUTION CONTROL HEARINGS BOARD

  
MATTHEW W. HILL, Chairman

  
JAMES T. SHEEHY, Member

  
WALT WOODWARD, Member

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER